

1 JUDGE CHACHKIN: I understand that. I'm reserving a
2 ruling --

3 MR. SCHAUBLE: Okay.

4 JUDGE CHACHKIN: -- with respect to -- my ruling
5 will govern all these exhibits after I hear further argu-
6 ment --

7 MR. SCHAUBLE: Yeah.

8 JUDGE CHACHKIN: -- either this afternoon or tomor-
9 row morning.

10 MR. SCHAUBLE: There are a few exhibits which do
11 have a different time frame problem, which I'll, I'll get to.

12 JUDGE CHACHKIN: All right, but as far as this
13 problem is concerned, my ruling will apply to all the exhib-
14 its.

15 MR. SCHAUBLE: Is it Your Honor's preference that I
16 not -- that --

17 JUDGE CHACHKIN: Well, you, you can state it. You
18 can state it but I'm indicating the way I'm going to resolve
19 it.

20 MR. SCHAUBLE: Okay. I also object to para-
21 graph 5 --

22 JUDGE CHACHKIN: Yes.

23 MR. SCHAUBLE: -- on page 2 going over to page,
24 page 3 on, on the basis which I objected to the previous
25 exhibit, that this is this witness's opinion and there's no

1 real, no real basis given here.

2 (Asides.)

3 JUDGE CHACHKIN: You object to paragraph 5?

4 MR. SCHAUBLE: Yes, Your Honor.

5 JUDGE CHACHKIN: On the grounds that there's no
6 foundation for it, is that your objection?

7 MR. SCHAUBLE: Correct.

8 JUDGE CHACHKIN: Any response?

9 MR. EMMONS: Well, I think there's ample foundation,
10 Your Honor. The, the witness has gone into quite some detail
11 about his experience with -- both on this station and, and
12 other stations, and he --

13 JUDGE CHACHKIN: Has he identified any other sta-
14 tion?

15 MR. EMMONS: No, he's not --

16 JUDGE CHACHKIN: Has he identified any other program
17 that he appeared on?

18 MR. EMMONS: No, but he does --

19 JUDGE CHACHKIN: Does he identify the station? He
20 says, "I was accorded five more time -- far more time on
21 WHFT." Has he identified stations which he appeared on and
22 which he was afforded less time on -- than on, on WHFT?

23 MR. EMMONS: He's identified the nature of the
24 format on other stations as being too date oriented which is
25 different from the format he's experienced on this station.

1 JUDGE CHACHKIN: In, in his, his opinion, he prefers
2 the format on WHFT.

3 MR. EMMONS: Yes, and on that point, Your Honor, let
4 me read you from the review board decision at Intercontinental
5 Radio, 98.FCC 2nd, at page 694. This is the review board's
6 statement: "Mrs. Guilford lauded the station for profession-
7 alism, follow up, and its genuine interest in the county,
8 which, in her opinion, exceeded that of the other area sta-
9 tions." So I think that that's relevant.

10 MR. SCHAUBLE: Your Honor, I'll flesh out my objec-
11 tion a little more. First of all, much of what he -- much of
12 this witness's experience refers to radio stations as opposed
13 to television stations, so in a sense I think, you know, radio
14 is an inherently different medium than television so we're
15 comparing apples and oranges, and he, he said, "I appeared on
16 other television stations in the Miami area," but there's no
17 information on here on what stations, when he appeared on
18 television stations. All we can tell here, his appearances
19 took place during a completely different license term.

20 JUDGE CHACHKIN: That's another difficulty. You,
21 you --

22 MR. EMMONS: Well, the witness has an opinion,
23 Your Honor, that this station, in, in this witness's opinion,
24 has provided service in some form that this witness finds
25 superior to that of other stations in the, in the community,

1 and it seems to me, based on, on the portion of the
2 Intercontinental that that has been relied upon by the
3 Commission in the past as being relevant and, and given
4 weight.

5 JUDGE CHACHKIN: Well, would you tell me how, in the
6 absence of information here, as to what specific television
7 stations he's appeared on, and when, more particularly, he
8 appeared on these stations? Is one to form an opinion whether
9 this was inside or outside the license term?

10 MR. EMMONS: Well, Your Honor --

11 JUDGE CHACHKIN: Well, it's not here. I mean, how
12 am I supposed to determine?

13 MR. EMMONS: I'm not arguing about that, Your Honor.
14 It, it, it isn't here. That's --

15 JUDGE CHACHKIN: And if it's not here, then how do
16 I, how do I know whether this is relevant -- falls within the
17 relevant time period? It says, "I have appeared on other
18 television stations."

19 MR. EMMONS: Well, once again, Your Honor, the,
20 the --

21 JUDGE CHACHKIN: And he has his own radio show.

22 MR. EMMONS: The witness has, again, in introductory
23 paragraph 2 has, has made clear that he's talking about the
24 period February '87 to February '92. I think that, that
25 qualifies it for all of his testimony.

1 COURT REPORTER: Excuse me, could you move the
2 microphone in front of you? It's being covered up by books
3 and all. You really need it in front of you like -- thank
4 you.

5 JUDGE CHACHKIN: Have these individuals been
6 deposed, any of them?

7 MR. EMMONS: No, Your Honor, none of the parties had
8 liked to depose any of them.

9 MR. SCHAUBLE: Your Honor, I, I, I don't think it
10 was Glendale's responsibility to provide a foundation, a
11 competent foundation, for TBF's direct case exhibits and
12 cross-examination. I think TBF had the burden of showing --
13 of proving that its direct case exhibits were relevant and
14 based on a competent foundation.

15 JUDGE CHACHKIN: I'm going to reject paragraph 5
16 under the grounds that a competent foundation has not been
17 laid on which a conclusion could be drawn.

18 MR. SCHAUBLE: Next, Your Honor, I object to para-
19 graph 6 on the basis of relevance and competence. He makes
20 claims here that WHFT makes a real effort to be multiracial
21 and multicultural but there's no evidence in, you know --
22 what's that based on? How much, how much viewing does this
23 individual undertake? What, what hosts -- what depth is he
24 talking about? There's no, there's no foundation in here.

25 MR. EMMONS: Your Honor, the similar testimony has

1 | been received and relied upon in other cases. The
2 | Intercontinental case, same review board decision, the review
3 | board cited the fact that the witness lauded the station for
4 | its "genuine interest in the county." That's a witness's
5 | perception that obviously goes to the witness's view of the
6 | station's performance and it's relevant for that reason, if no
7 | other.

8 | MR. SCHAUBLE: Your Honor, I don't hear that as
9 | being the same matter as, as is offered in paragraph 6 here.

10 | MR. EMMONS: Well, if I understand the objection,
11 | Your Honor, it goes to the effect that the witness is saying
12 | that the station made a real effort to do certain things and
13 | it had a real impact in serving the community. That's what I
14 | understand to be the basis of the objection.

15 | JUDGE CHACHKIN: My difficulty is in the absence of
16 | any factual foundation, these are just conclusionary state-
17 | ments, one after another. There's no factual foundation.
18 | These are just conclusions. Where are the facts to base it
19 | up?

20 | MR. EMMONS: I think the facts, Your Honor, was
21 | stated earlier in the, in the, in the --

22 | JUDGE CHACHKIN: Where? Where are the facts?

23 | MR. EMMONS: Well, the fact that he -- in para-
24 | graph 4, the witness speaks about his appearances on the
25 | station on certain programs, and describes what was discussed

1 on those programs, and what the reaction from the community to
2 those programs was, and certainly those are the facts on, on
3 which he --

4 JUDGE CHACHKIN: But is he, is he stating there that
5 on those particular programs there was a multiracial, multi-
6 cultural appearances by different individuals, is that what
7 he's saying? Where is he saying that? I mean, through these
8 statements here. I'm talking about paragraph 6. Now, do
9 you -- are you submitting any exhibits showing the, the nature
10 of the guests who appeared on particular programs from which I
11 have a factual basis?

12 MR. EMMONS: Yes.

13 JUDGE CHACHKIN: You do have?

14 MR. EMMONS: Yes.

15 JUDGE CHACHKIN: The makeup of -- the, the racial or
16 cultural makeup of guests appearing on -- hosting programs on
17 the station?

18 MR. EMMONS: There, there, there are, there are
19 other exhibits that, that do identify that guests were minor-
20 ity, or were Hispanic, or were black.

21 JUDGE CHACHKIN: Well, if that's the case, that's
22 what I'll rely on in determining whether or not you have
23 guests, hosts, who are of different backgrounds. I'm not
24 going to rely on these general statements here with any foun-
25 dation as to what programs he -- it doesn't even identify the

1 particular programs on which these hosts appeared. It doesn't
2 identify the names of the programs or the, or the, or the
3 breakdown of the, the, of the hosts in terms of what racial
4 background, or ethnic background, or cultural background they
5 had. He's made a sweeping general statement. "WHFT clearly
6 makes a real effort to be multiracial and multicultural,
7 particularly in the people whom they chose to host programs on
8 the station. The hosts and guests of WHFT program reflect a
9 rich ethnic and racial diversity in Miami." I want to make
10 clear I'm not a -- I'm not contending that this type of evi-
11 dence couldn't be put in. I'm contending there's no factual
12 background basis of these statements.

13 MR. EMMONS: Well --

14 JUDGE CHACHKIN: We have general statements; we have
15 sweeping conclusion.

16 MR. EMMONS: Well, these are --

17 JUDGE CHACHKIN: Where are the facts to base -- that
18 the -- that this man has -- is an opinion to render such
19 opinion -- is in a position to render such opinion? Where is,
20 where is there any evidence in your exhibit? This is your
21 exhibit. Just making general conclusions is nothing -- I
22 can't, I can't make findings on the basis of general conclu-
23 sions.

24 MR. EMMONS: Well --

25 JUDGE CHACHKIN: Now, if the man had said that, "The

1 | programs that I were, were on, there was such and such a
2 | breakdown, such and such a makeup," then I could draw a con-
3 | clusion saying, "Well, there is a factual basis for it." But
4 | sweeping conclusions without any basis for it, I can't do
5 | anything with.

6 | MR. EMMONS: Well, and so, Your Honor, elsewhere in,
7 | in, in the exhibits offered there, there is information that,
8 | that would substantiate the statements that are made by this
9 | witness in paragraph 6, and beyond that, Your Honor, this is
10 | this witness's perception of the programming and his opinion,
11 | which --

12 | JUDGE CHACHKIN: But that's irrelevant, his percep-
13 | tion. We need facts. His opinion, if it's, if it's errone-
14 | ous, it doesn't do us any good. I mean, you could -- it's one
15 | thing to render an opinion on something which you have per-
16 | sonal knowledge of, but to render an opinion on, on, on mat-
17 | ters on which, apparently, he has no personal knowledge of, or
18 | at least it's not reflected --

19 | MR. EMMONS: But --

20 | JUDGE CHACHKIN: -- the nature of his knowledge.

21 | MR. EMMONS: It is relevant to his own view of
22 | whether the station has been meritorious in its performance,
23 | and, and even if that is a wrong opinion, if you use the word,
24 | that, that's relevant nonetheless. This is not offered to
25 | establish the, the, the underlying facts. This is offered to

1 establish this witness's perception and his view of the
2 station's -- of the, of the merit of the station's perfor-
3 mance.

4 JUDGE CHACHKIN: Now wait a minute, that's not what
5 it's being offered as. It's being offered for the truth of
6 the matters contained herein. Your argue -- you -- this is
7 being offered to show this, in fact, is a -- what the station
8 does, not the man's opinion, not his, not his opinion, but the
9 fact that he may believe the station does. This is being
10 offered the truth of the matter is that the station, in fact,
11 does these things, and I'm saying if it's being offered for
12 that purpose, then, then there has to be a, a, a basis for it,
13 a factual underpinning, and there isn't any.

14 MR. EMMONS: Your Honor, it's being offered for, for
15 his view of the station's programming and, and service to the
16 community.

17 JUDGE CHACHKIN: All right, I'm, I'm not going to
18 argue this. His view is irrelevant unless it has a factual
19 basis for it, and I can't place any value on it if it doesn't
20 have a factual basis for it, and since you -- it was your
21 exhibit and you haven't provided the underlying facts on
22 which, on which I can form an opinion, on which I can draw a
23 conclusion, then I'm not going to receive the matter. Your
24 objection is to what?

25 MR. SCHAUBLE: That was to paragraph 6, Your Honor.

1 I also have an objection to paragraph 7 on the basis of
2 relevance and competence. This appears to be --

3 JUDGE CHACHKIN: I'm not going to receive para-
4 graph 6 as indicated. It's not a question of relevancy here.
5 It's a question of competency here and there's no factual
6 basis for the statements made. As far as Exhibit 7, again --
7 what was --

8 MR. EMMONS: Paragraph 7, Your Honor.

9 JUDGE CHACHKIN: Yeah, paragraph 7. You're talking
10 about the first sentence, the reputation?

11 MR. SCHAUBLE: My objection to it is to the -- yes,
12 Your Honor. I, I have an objection to the entirety of para-
13 graph 7.

14 JUDGE CHACHKIN: Well, let's -- first sentence deals
15 with reputation.

16 MR. SCHAUBLE: It's not apparent that there's any
17 particular basis for the, for the sentence. If TBF is arguing
18 that the basis refers to the rest of the, rest of the para-
19 graph, I object on the basis of, one, competence and, two,
20 relevance. There's no, there's no specifics here that -- it's
21 very general and vague as to discussions with senior citizens.
22 We don't know what, what programs are being taught here. It
23 could be entertainment programs for all we, all we're talking
24 about. It's based on -- the last two sentences here, it's
25 based on pure hearsay which is being offered for truth, truth

1 of the matter of service, and there's no relevance and, and no
2 competency here.

3 MR. EMMONS: Well, Your Honor, on the point about, I
4 guess, competence which Mr. Schauble is addressing concerning
5 the fact that he considers -- listens to the station and finds
6 it popular. Again, this, this is exactly the kind of testi-
7 mony that the Commission has accepted in other renewal cases.
8 The one public witness in the Seattle Public Schools case
9 testified that "maybe young people listen to KNHT." That
10 quote is in the initial decision. In the Metroplex Fort
11 Lauderdale initial decision, "WHYI is a popular radio station
12 for young people."

13 COURT REPORTER: Excuse me, I have to change the
14 tape at this time.

15 JUDGE CHACHKIN: Go ahead.

16 (Whereupon, a brief recess was taken.)

17 (End of Tape 1; Start of Tape 2.)

18 COURT REPORTER: Please continue.

19 MR. EMMONS: Just one final. The Intercontinental
20 Radio initial decision, "Some public witnesses noted the
21 station's particular appeal to the black community, to youth,
22 senior citizens, and others." So the Commission has relied
23 on, on this kind of testimony on grounds of relevancy.

24 MR. SCHAUBLE: Your Honor, if I may reply?

25 JUDGE CHACHKIN: Yes.

1 MR. SCHAUBLE: I think you have to make a
2 distinction as to -- I mean, even, even assuming that there is
3 any relevance to the sort that this -- I think the only thing
4 that could arguably be relevant is a station's
5 issue-responsive programming. Here there's no determination
6 as to what programming is being discussed here. Counsel
7 referred to the Seattle Public Schools case. The review board
8 in Seattle Public Schools made it clear that the entertainment
9 format of KNHT FM is of no moment here. This is from para-
10 graph 15 from the review board's decision. So unless there is
11 some sort of -- you know, even, even if you accept Mr. Emmons'
12 argument that this sort of opinion could be relevant, there's
13 no foundation here that the type of programming being dis-
14 cussed here is what the Commission would consider under a
15 renewal expectancy.

16 MR. EMMONS: Well, Your Honor, on that point, again
17 I -- the, the Commission has, has repeatedly accepted evidence
18 of programming that, I think, under no way could be described
19 as issue-responsive programming. I go, go to the Fox Los
20 Angeles initial decision noting, for example, special events
21 coverage of the St. Patrick's Day parade, the Portland Rose
22 Festival, the World Music Video Awards preview, and many, many
23 others of that nature which are -- sports specials, for exam-
24 ple, the history of the Korean War, which are not shown or
25 described there as issue-responsive programs, and yet,

1 obviously, were, were deemed relevant and relied on in, in the
2 renewal expectancy analysis. So --

3 JUDGE CHACHKIN: Um-hum, again I'm not questioning
4 programs. I'm questioning the competency and reliability of,
5 of this material.

6 MR. EMMONS: Well, the man --

7 JUDGE CHACHKIN: It says, "I visit the elderly in
8 their homes." He says, "Many of our older residents depend on
9 Channel 45." I don't, I --

10 MR. EMMONS: Well, it means this man is -- he's a,
11 he's a -- it's called Sheridan House. He's the executive
12 director of it, and he's talking about the persons of that
13 house. Apparently, it's a, it's an elderly or senior citi-
14 zens' home. Certainly he's competent to speak to that. I
15 mean, this is, this is the basis for, for his testimony con-
16 cerning the reputation in the community.

17 JUDGE CHACHKIN: It doesn't even say Sheridan House
18 deals -- has senior citizens. It describes Sheridan House in,
19 in paragraph 3. It says nothing about senior citizens. I
20 would agree with you that if he in charge of a home where
21 senior citizens live that presumably he would have some know-
22 ledge of their viewing habits, but here he's saying he, he's
23 visited --

24 MR. EMMONS: Well, I think your point is well-taken,
25 Your Honor, and I, I -- you're quite right. I misread this.

1 Sheridan House is not for senior citizens. In paragraph 3 it
2 seems to be a home for teenagers primarily, but based on his
3 visits to senior citizens he has obviously formed an opinion
4 and based on what he's observed there -- and it seems to me
5 he's competent to make that observation.

6 JUDGE CHACHKIN: Any other objections?

7 (Asides.)

8 JUDGE CHACHKIN: I have difficulty, frankly, in, in
9 using this material for purposes of establishing the renewal
10 expectancy. It's, it's so general. There are no facts pre-
11 sented, but I, I, in this case, I, I will receive all of
12 paragraph 7 with the exception of the first sentence which
13 deals with reputation, recognizing that as far as I'm con-
14 cerned, it has no evidential value. Any other objections?

15 MR. SCHAUBLE: Not to Exhibit 3, Your Honor.

16 JUDGE CHACHKIN: All right. T, TBF Exhibit 3 is
17 received.

18 (Whereupon, the exhibit marked for
19 identification as TBF Exhibit 3 was
20 received into evidence.)

21 MR. EMMONS: Next, Your Honor, TBF offers TBF
22 Exhibit 4, the declaration of Robert C. Bashaw.

23 JUDGE CHACHKIN: Any objections?

24 MR. SCHAUBLE: Yes, Your Honor. In paragraph 2 --

25 JUDGE CHACHKIN: Yes.

1 MR. SCHAUBLE: -- beginning the eighth line down
2 with the sentence "from my conversations with others," going
3 down to the end of paragraph 2 on page 2 of the exhibit. I
4 object on the basis that this is competency and hearsay. This
5 person's opinion appears to be based on hearsay conversations
6 which are being offered to the truth of the matter asserted.

7 MR. EMMONS: Well, they're not being offered for the
8 truth of the matter asserted. They're being offered on the
9 basis of the, the witness's opinion, which is stated at the
10 end of the paragraph in the last sentence, and again, there-
11 fore, goes to the -- this witness's view of the merits of the
12 station's performance.

13 MR. SCHAUBLE: Your Honor, I don't --

14 JUDGE CHACHKIN: If it's not being offered for the
15 truth, I don't understand how it's relevant.

16 MR. EMMONS: Well, I, I guess it comes down to,
17 Your Honor, the question of whether his opinion is relevant.
18 I think you've made your views clear on that. We have a
19 different view but we state that.

20 MR. SCHAUBLE: Particularly, Your Honor, the opin-
21 ion, as he -- the opinion is especially irrelevant if the
22 opinion is based upon what he was told from other people. I
23 think that only increases the competency problem.

24 JUDGE CHACHKIN: Well, that does make it -- now
25 we're, now we're dealing with third parties removed. We're

1 not even dealing here with situations where he personally
2 observed and spoke to somebody. We're dealing situations
3 where individuals, unnamed individuals, allegedly provided him
4 statements on which he's formed some kind of opinion of what
5 they've said. On the basis of that, he's now drawing an
6 opinion as to the station's programming. I'm certainly not
7 going to receive that. So the material from -- beginning with
8 "from my conversations" to the end of the paragraph will not
9 be received.

10 MR. SCHAUBLE: Your Honor, my next objection is to
11 paragraph 4 on page 2 going to page 3 on the basis previously
12 discussed that there's an inadequate basis being given here.
13 The witness states that he watches the station's programming
14 for a few hours nearly every day but there's no basis as to
15 when and which programs specifically he watched, how, how
16 regular this was, whether this was true for the entire period,
17 and also on the basis that Your Honor has previously stated
18 that this witness's opinion in and of itself is not relevant
19 under renewal expectancy.

20 JUDGE CHACHKIN: So your objection goes to access,
21 too?

22 MR. SCHAUBLE: My objection -- I believe my objec-
23 tion goes to the entirety.

24 JUDGE CHACHKIN: Well, he talks about how the sta-
25 tion helped his particular -- how it helped Graceworks, which

1 is his particular involvement.

2 MR. SCHAUBLE: I, I think --

3 JUDGE CHACHKIN: I have no problem with that.

4 MR. SCHAUBLE: That one sentence -- but I think the
5 rest of the paragraph -- I think the rest of that paragraph
6 has the same infirmity.

7 JUDGE CHACHKIN: What, what, what specific sense is
8 it you're objecting --

9 MR. SCHAUBLE: Okay, the objection would be --

10 JUDGE CHACHKIN: I will not receive -- let me indi-
11 cate that I will not receive from where it states from "during
12 the period 1987 through 1991" until "not have had access to."
13 I will not receive that since there's not enough facts on
14 which to draw a conclusion as to his listening habits, or
15 sufficient that he's in a position to, to indicate whether the
16 station was responsive for local needs, news, and issues.

17 MR. SCHAUBLE: Your Honor, I, I would also object to
18 the sentence after that. I, I understand you wrote -- I would
19 also object to the sentence, "I would describe the station's
20 programming during that period as unique." That sentence, the
21 following sentence, "I think that the station's programming
22 especially benefitted the area's minority community by
23 addressing problems of particular concern to that community,
24 including the issues of drug and alcohol addiction, homeless-
25 ness, and the problems associated with low self, low self

1 esteem."

2 JUDGE CHACHKIN: Now, I don't know what he's talking
3 about there. Is he talking about services offered by
4 Graceworks?

5 MR. EMMONS: I --

6 JUDGE CHACHKIN: Or is he talking about other pro-
7 gramming?

8 MR. EMMONS: I, I'm not clear what sentence we're
9 talking about, Your Honor. Is that the --

10 JUDGE CHACHKIN: I'm talking where it says "on a
11 personal level" and continues on. The first sentence says, he
12 talks about, the services offered by Graceworks.

13 MR. EMMONS: Yes.

14 JUDGE CHACHKIN: And then he goes on to say, "I
15 would describe the station's programming during that period as
16 unique, offering the same type of nondenominational coverage,
17 coverage of Christian concepts that WHFT made available to the
18 community." Now, what is he talking about there? Is he
19 talking about Graceworks, or he's talking about the station's
20 overall programming, or what is he talking about there?

21 MR. EMMONS: Well, it appears to me, Your Honor,
22 he's talking about the, the overall general programming.

23 JUDGE CHACHKIN: And there's no indication here that
24 the -- which one could form an opinion that he has knowledge,
25 that he --

1 MR. EMMONS: Well --

2 JUDGE CHACHKIN: -- of, of the overall programming.

3 MR. EMMONS: Well, I would, I would disagree with
4 you on that but you've already ruled on the striking the first
5 sentence of paragraph 4 so that -- if that sentence is not
6 allowed in then I, I would agree there is no basis for that.

7 JUDGE CHACHKIN: If this material is being offered
8 to show how the station has provided services or enhanced
9 services offered by Graceworks, I have no problem with it
10 since he has personal knowledge of Graceworks and what the
11 station has done for, for Graceworks, but it's difficult to
12 tell by reading this material whether this -- now he goes
13 beyond Graceworks and he's talking about generally the sta-
14 tion's programming, and if he's talking generally about sta-
15 tion's programming then there's no identification of any
16 programming.

17 MR. SCHAUBLE: Your Honor, as I read the exhibit,
18 the only sentences that would, would relate to Graceworks
19 would be on, on the sentence "On a personal level, the station
20 helped to enhance my work in the community by letting people
21 know about the services offered by Graceworks and by opening
22 the door for me to get involved in other community activi-
23 ties," and arguably the last sentence of the paragraph,
24 although I have a different objection to, to the last sentence
25 there. I think the material in between those two sentences,

1 | there's, there's no competent foundation here concerning the
2 | station's --

3 | JUDGE CHACHKIN: I will not, I will not receive the
4 | sentence beginning, "I would describe the station's programs,"
5 | since that apparently refers to the overall programming, and
6 | there's no information here indicating that he has knowledge
7 | of the overall programming.

8 | MR. SCHAUBLE: Your Honor, I'd also object to the
9 | next, next sentence, "I think that the station's programming
10 | especially benefitted the area's minority community by
11 | addressing problems with particular concern to that community,
12 | including the issues of drug and alcohol addiction, homeless-
13 | ness, and the problems associated with low self esteem."

14 | JUDGE CHACHKIN: I will -- I won't receive that
15 | sentence if I -- for the same reason, no factual foundation
16 | supporting his alleged knowledge.

17 | MR. SCHAUBLE: And, Your Honor, the --

18 | MR. EMMONS: Your Honor --

19 | JUDGE CHACHKIN: Yes?

20 | MR. EMMONS: -- the, the following -- the next
21 | sentence I think supplies the factual foundation where the
22 | witness says, "Approximately 50 percent of the people enrolled
23 | in the Graceworks program --" that's this witness's program --
24 | "are members of a minority group, and a substantial number of
25 | them have told me that they've been positively helped by

1 WHFT's programming."

2 JUDGE CHACHKIN: My difficulty there is there's no
3 indication of what help was performed and what way they were
4 helped.

5 MR. SCHAUBLE: And it would be my objection to the
6 last sentence, Your Honor, this is also, this is also hearsay
7 testimony which is being offered to the truth of the matter
8 asserted.

9 MR. EMMONS: Well, on that point, Your Honor, the,
10 the viewer reaction or, or response to particular programs
11 has, has been accepted by the Commission. For example, in the
12 Fox case, a public witness testified, "We, we know from rou-
13 tine follow up by our teen listeners that many of the young
14 people seeking help from "Teen Line" learned of it from the
15 announcements broadcast over KGGB." So that -- if that's
16 hearsay, then that form of hearsay has been, you know --

17 JUDGE CHACHKIN: Well, all, all he's testified to
18 that they learned of the particular thing on the basis -- they
19 know based on a follow-up that they learned of it, but here
20 you've gone beyond that. You said they've been positively
21 helped by WHFT's programming. That's far different than about
22 learning about a particular program or organization, and
23 you've come pretty broad to say they've been positive -- told
24 me they've been positively helped. There's no evidence of
25 what manner they were positively helped. That's, that's quite

1 a leap. Am I supposed to draw a conclusion now that, in
2 fact -- well, let me, let me understand what you're offering
3 this for. Are you offering this for me to draw a conclusion
4 that, in fact, 50 percent of the people -- a substantial
5 number of the people involved in Graceworks have been posi-
6 tively helped by WHFT's programming? Are you offering that
7 for the, for the truth of the matter contained therein?

8 MR. EMMONS: No, that's offered, Your Honor, as the
9 basis for the preceding sentence of the witness, his, his view
10 that the station's programming has benefitted the minority
11 community.

12 MR. SCHAUBLE: I think, Your Honor, if it's, if it's
13 being offered as part of that basis, I think it has to be
14 allowed into the -- has to be accepted for the truth of the
15 matter asserted, because if it's not being offered to the
16 truth of the matter asserted, it's, it's an incompetent basis.

17 JUDGE CHACHKIN: I'll allow in the sentence about
18 "approximately 50 percent of the people enrolled in Graceworks
19 programs are members of minority groups." The remainder of
20 these sentences will not be received.

21 MR. SCHAUBLE: Next, Your Honor, I also have an
22 objection to the entirety of paragraph 5 concerning the sta-
23 tion's prayer line on the basis that I -- we -- the record
24 will show that the prayer line is not cognizable community
25 involvement and, therefore, the witness's testimony concerning

1 | this matter is not relevant.

2 | JUDGE CHACHKIN: What's this now, about a tele-
3 | phone -- prayer line?

4 | MR. SCHAUBLE: Prayer line. This is paragraph,
5 | paragraph 5 of the --

6 | JUDGE CHACHKIN: I understand. What was the nature
7 | of the objection?

8 | MR. SCHAUBLE: My, my -- I'm objecting on the basis
9 | of relevance that what he's describing here is not relevant,
10 | and I think, I think that in order to make that objection I
11 | have to explain at least my general objections to the --

12 | JUDGE CHACHKIN: Why, why --

13 | MR. SCHAUBLE: -- testimony.

14 | JUDGE CHACHKIN: Why isn't it relevant?

15 | MR. SCHAUBLE: Your Honor, in the Pillar of Fire
16 | case, the review board held that the renewal expectancy is
17 | not -- credit, credit is not given for religion qua religion.
18 | If credit is given for, for the Prayer Line program here, that
19 | is exactly what the Commission would be doing and such a
20 | ruling would violate the establishment quality of the First
21 | Amendment of the Constitution. If you look at Miss Downing's
22 | exhibit --

23 | JUDGE CHACHKIN: What exhibit is that?

24 | MR. SCHAUBLE: Exhibit 33, paragraphs 21 and 22 on
25 | pages 17 and 18.

1 MR. EMMONS: I'm sorry, Mr. Schauble, but could
2 you --

3 MR. SCHAUBLE: Exhibit 33, page 17, paragraph 21.
4 (Pause.)

5 JUDGE CHACHKIN: Thirty-three, what page?

6 MR. SCHAUBLE: Seventeen, Your Honor.

7 JUDGE CHACHKIN: Thirty-three, seventeen. Yes,
8 where, where on page 17?

9 MR. SCHAUBLE: Paragraph, paragraph 21.

10 JUDGE CHACHKIN: Twenty-one?

11 MR. SCHAUBLE: And going onto 22. Miss Downing
12 describes the types of calls that are received on the, on the
13 prayer line, and there, there are five types. The first type,
14 which is by far the most common, is a prayer request, which
15 consist of viewers calling to ask the prayer partner to pray
16 with them. Then there are salvations calls, which are calls
17 from people who are watching, watching TBF programming and had
18 a conversion experience and decided to accept Jesus as their
19 Savior. The third category is rededications, which
20 Miss Downing describes as calls from people who once were
21 Christians who, for one reason or another, have drifted away
22 from their faith and have decided to come back and rededicate
23 their lives to Jesus. The fourth category they described as
24 praise reports, which are calls from people who want to share
25 that the Lord has answered a prayer or to give thanks to the